

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. M.,	:	
	:	
Appellant,	:	CASE NO. 2010-67
	:	
vs.	:	
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by J. M. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until June 1, 2010, with the option of attending an alternative school during the period of expulsion, after finding him guilty of improperly touching a female student. Appellant claims that the disciplinary tribunal was wrongly composed, the school's witness was untruthful, and the prior disciplinary records were incorrectly considered. The Local Board's decision is sustained.

On December 4, 2009, the Student accompanied a female student to a supply room to obtain a sheet of poster board. While in the room, the Student grabbed the female student's buttocks. The female student reported the incident and the Student was charged with sexual harassment and indecent touching.

A student disciplinary tribunal hearing was held on December 15, 2009. The hearing was held before a hearing officer sitting without a panel. Also in attendance was a hearing officer-in-training who did not participate in the hearing. The female student presented testimony concerning the incident. The Student testified and claimed that the incident did not occur. The hearing officer found the Student guilty of improperly touching another student and expelled him until June 1, 2010, with the opportunity to serve his expulsion in an alternative school. The Local Board upheld the tribunal's decision and the Student then appealed to the State Board of Education.

On appeal, the Student claims that the disciplinary tribunal panel was improperly constituted because there should have been three panel members. He also claims that his prior disciplinary records were incorrect and should not have been considered. The Student however, did not raise either of these issues at the tribunal hearing and raises them for the first time in this appeal. "If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made." *Hutcheson v. DeKalb Cnty. Bd. of Educ.*, Case No. 1980-5 (Ga. SBE, May 8, 1980). The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before

the Local Board. *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983). Both of these issues, therefore, are without merit and will not be considered.

The Student also claims that the testimony of the female student was not credible. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). "It is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 11, 1996). The hearing officer had the opportunity to observe the demeanor of the witnesses and had the responsibility of deciding which version of the facts to believe. The hearing officer chose to believe the female student. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The female student testified that the touching occurred, which constitutes direct evidence of the incident. The Student's claim, therefore, does not provide any basis to reverse the Local Board's decision.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of May 2010.

William Bradley Bryant
Vice Chairman for Appeals